

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	No. 03-530-A
)	
VINEET K. CHHABRA)	

PLEA AGREEMENT

The United States and defendant Vineet K. Chhabra have entered into a plea agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to plead guilty to Count One of the superseding indictment charging the defendant with conspiracy, in violation of Title 21, United States Code, Section 846. The maximum penalties for this offense are a maximum term of five years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and three years of supervised release. The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea

agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts is hereby incorporated into this plea agreement.

3. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

4. Waiver of Right to Jury Trial on Sentencing Factors

The defendant, by entering this plea, also waives the right to have facts that determine the offense level under the Sentencing Guidelines (including facts that support any specific offense characteristic or other enhancement or adjustment) (1) charged in the indictment, or (2) proven to a jury. The defendant explicitly consents to be sentenced pursuant to the applicable Sentencing Guidelines as recommended by the parties, and to allow the Court to consider any reliable evidence without regard to its admissibility at trial. The defendant also waives all challenges to the constitutionality of the Sentencing Guidelines.

5. The Parties' Agreement Concerning Sentencing

This plea is taken pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, in that the parties have agreed that a specific sentence is the appropriate disposition of the case, and that particular provisions of the Sentencing Guidelines, policy statements, and sentencing factors are applicable to this case. Pursuant to Rule 11(c)(1)(C), such a plea agreement is binding on the Court once it is accepted by the Court. Specifically, the parties agree to the following:

- a. The appropriate sentence in this case is 33 months of imprisonment.
- b. The appropriate application of the United States Sentencing Guidelines is as follows:
 - i. The applicable base offense level for Count 1 is 20, pursuant to U.S.S.G. § 2D1.1(c)(10). No reduction pursuant to U.S.S.G. § 2D1.1(b)(6) is applicable.
 - ii. A three level upward adjustment is applicable for the defendant's role in the offense, pursuant to U.S.S.G. § 3B1.1(b).
 - iii. A three level reduction is applicable for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(a) and (b).
 - iv. The defendant's criminal history category is Category I.
Therefore, the guideline sentencing range is 33 to 41 months.
 - v. The parties agree and stipulate that the appropriate sentence within this guideline range is 33 months of imprisonment.
- c. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into

consideration by the Sentencing Commission in formulating the Guidelines that should result in a sentence different from the range determined by the Court. Accordingly, the parties agree not to seek or support any departure from or sentence outside of the applicable guideline range for any reason not set out explicitly in this agreement.

The United States agrees to recommend to the Court that the defendant remain free under the defendant's current bail conditions after the entry of the defendant's plea and that the defendant be permitted to self-surrender to the designated Bureau of Prisons facility following the defendant's sentencing. These recommendations concerning bail and self-surrender are not binding upon the Court.

6. Role of the Court

This plea agreement is made pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure and, therefore, pursuant to Rule 11(c)(3), it requires submission to the Court for its review before entry of the plea. The parties have submitted this plea agreement to the Court and have requested that the Court accept the plea agreement, pursuant to Rule 11(c)(4). If the Court accepts the plea agreement, the agreed disposition will be included in the judgment. If the Court rejects the plea agreement, the Court will give the defendant an opportunity to withdraw the defendant's guilty plea.

7. Waiver of Appeal and Review

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and the agreed upon sentence (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section

3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

8. Special Assessment

On or before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

9. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to Title 18, United States Code, Sections 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

10. Immunity from Further Prosecution in this District

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the superseding indictment or statement of facts.

11. Dismissal of Other Counts

As a condition of the execution of this agreement and the Court's acceptance of the defendant's plea of guilty, the United States will move to dismiss the remaining counts of the superseding indictment against this defendant.

12. Defendant's Cooperation

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard:

- a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.
- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.
- d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice.

- e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

13. Use of Information Provided by the Defendant Under This Agreement

The United States agrees not to use any truthful information that the defendant provides pursuant to this agreement to further prosecute the defendant in the Eastern District of Virginia, except for information concerning crimes of violence or crimes involving or relating to terrorism. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement, however, restricts the Court's or Probation Office's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony. Nothing in this agreement in any way prevents the government from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

14. Prosecution in Other Jurisdictions

The United States Attorney's Office for the Eastern District of Virginia and the Office of Consumer Litigation, U.S. Department of Justice, will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant the United States Attorney's Office for Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

15. Ban from Internet Pharmacy Business

As a condition of supervised release, the defendant agrees not to engage directly or indirectly in any business, entity, or organization that involves the distribution of prescription medication through the use of the Internet.

16. Defendant Must Provide Full, Complete, and Truthful Cooperation

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

17. Motion for a Downward Departure

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate. The defendant acknowledges that he has been advised that the United States does not anticipate that it will file a motion seeking such a departure or reduction.

18. The Defendant's Obligations Regarding Assets Subject to Forfeiture

The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past seven years, or in which the defendant has or had during that time any financial interest. The defendant agrees to complete, sign and return to the United States Attorney's Office, attention AUSA Karen Taylor, an OBD 500. The defendant agrees to take all steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to undergo any polygraph examination the United States may choose to administer concerning such assets and to provide and/or consent to the release of the defendant's tax returns for the previous seven years. Defendant agrees to forfeit to the United States all of the defendant's interests in any asset of a value of more than \$1,000 that, within the last seven years, the defendant owned, or in which the defendant maintained an interest, the ownership of which the defendant fails to disclose to the United States in accordance with this agreement.

19. Forfeiture Agreement

The defendant agrees to forfeit all interests in any drug-related asset that the defendant owns or over which the defendant exercises control, directly or indirectly, as well as any

property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of his offense, including but not limited to all property identified in the superseding indictment. The defendant further agrees to waive all interest in the assets in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of the sentence that shall be imposed in this case.

20. Waiver of Further Review of Forfeiture

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also waives any failure by the Court to advise the defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant understands and agrees that all property covered by this agreement is subject to forfeiture as proceeds of illegal conduct and substitute assets for property otherwise subject to forfeiture.

21. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the

date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and
- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f),

the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

22. Guilty Pleas by Co-Defendant Sabina S. Faruqi and Corporate Defendants

This plea agreement is expressly contingent upon the entry of a guilty plea by defendant Sabina S. Faruqi, pursuant to a separate plea agreement between Faruqi and the United States. If either defendant Vineet K. Chhabra or Sabina S. Faruqi fails to plead guilty as contemplated by the plea agreements, or if either defendant's plea is not accepted by the Court or is later withdrawn, the United States will, at its option, be released from its obligations under its plea agreement with the other defendant. The withdrawal of a plea of guilty or the breach of the plea agreement by one defendant will not, however, serve as a ground for the withdrawal of a guilty plea by the other defendant.

The defendant further agrees to cause defendants defendant VKC Consulting, LLC, and defendant Chhabra Group, LLC, each to plead guilty, pursuant to separate plea agreements with the United States, to Count 43 of the superseding indictment and represents he has the authority

to cause VKC Consulting, LLC and Chhabra Group, LLC to enter into plea agreements. The defendant further agrees and represents to the Court that he currently has no control over USA Prescriptions, Inc. and has not had any control over USA Prescriptions, Inc. since he divested himself of all ownership and rights in that corporation in or about July 2003.

23. Nature of the Agreement and Modifications

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: _____

Vineet K. Chhabra

Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

Thomas G. Connolly
Counsel for the Defendant

Respectfully submitted,

PAUL J. McNULTY
UNITED STATES ATTORNEY

By:

Brian D. Miller
Karen L. Taylor
Assistant United States Attorneys

Eugene Thirolf
Director
Office of Consumer Litigation
United States Department of Justice

Approved:

Kevin V. Di Gregory
Deputy Chief, Criminal Division
Assistant United States Attorney